

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CHARLES MARCUM,

Plaintiff,

vs.

Civil Action 2:07-CV-1176  
Judge Sargus  
Magistrate Judge King

KATRICE D. McRAE,

Defendant.

ORDER

Plaintiff, a state prisoner, filed an action in this Court, without prepayment of fees or costs under 28 U.S.C. §1915(a), alleging that defendant stole his personal property. On November 15, 2007, the Magistrate Judge issued a *Report and Recommendation* recommending that the case be dismissed for lack of subject matter jurisdiction. Doc. No. 6. The Magistrate Judge specifically reasoned that the parties appear to be citizens of Ohio and that the claim does not arise under federal law. This matter is now before the Court on plaintiff's objections to that *Report and Recommendation*, which the Court will consider *de novo*. 28 U.S.C. §636(b).

In his objections, plaintiff argues that his claims arise under 42 U.S.C. §1983, over which this Court has federal question jurisdiction. However, claims under §1983 may be brought only against persons "acting under color of state law." *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978). Nowhere in the *Complaint* is it alleged nor does it appear that the named defendant acted under color of state law.

Plaintiff also complains that, because his application for leave to proceed *in forma pauperis* was granted, his claim should be allowed to proceed. However, the order granting plaintiff's application


for leave to proceed *in forma pauperis*, Doc. No. 2, expressly stated that an initial screen of the complaint would be conducted under 42 U.S.C. §1915A to determine if the case should proceed. *Id.* It was after that initial screen that the Magistrate Judge issued the *Report and Recommendation* recommending dismissal of the action.

Having reviewed the *Report and Recommendation de novo*, the Court determines that plaintiff's objections are without merit. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Clerk shall enter **FINAL JUDGMENT**.

11-29-2007

Date

  
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Edmund A. Sargus, Jr.  
United States District Judge